UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

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on the 1st day of December, 1997

Served December 1, 1997

American Trans Air, Inc.

Violations of 49 U.S.C. § 41712
and 14 CFR Part 399

CONSENT ORDER

This consent order concerns several American Trans Air, Inc., ("ATA") advertisements that constitute violations of 49 U.S.C. § 41712, which prohibits unfair and deceptive practices, and the advertising requirements specified in Part 399 of the Department's regulations (14 CFR Part 399). This order directs ATA to cease and desist from future violations and to pay compromise civil penalties.

The first advertisement, which promoted one-way, off-peak fares between Milwaukee and various points, appeared in the *Milwaukee Journal Sentinel* on August 11 and 14, 1996, while a similar advertisement aired on local Milwaukee television on August 12, 1996. A check of the Sabre Computer Reservation System for August 15, 1996, showed that pertinent ATA flights to Phoenix, Los Angeles and San Diego covered by the advertisement were "zeroed out" (*i.e.*, seats were unavailable for sale). In addition, ATA never filed the sale fare for the Milwaukee--Phoenix flights in the computer reservation systems. Test calls to ATA on August 16, 1996, confirmed that the Phoenix, Los Angeles and San Diego flights would not be operating as promoted in the advertisement.

The second advertisement, promoting one-way, off-peak fares between Milwaukee and various points, appeared in the November 17, 1996, edition of the *Milwaukee Journal Sentinel*. Although the body of the advertisement included the prominent statement "... you'll fly nonstop on ATA," ATA did not offer nonstop service between Milwaukee and either Sarasota or Fort Lauderdale—two of the advertised destinations—but instead offered connecting service with Chicago Express, as indicated in the advertisement's fine print. A similar advertisement promoting nonstop service to California and Florida aired twice on November 17, 1996, on Milwaukee television. Furthermore, although the

advertisement promoted a "one way, off peak" fare of $119 to Nassau, there was no off peak fare to that destination on or after the date the advertisement appeared.

The third advertisement, promoting nonstop service between Milwaukee and Florida and other points, aired on Milwaukee television on January 27 and 29, 1997. The advertisement stated:

> First Frame: "Nonstop to sunny Florida"
> Second Frame: "Nonstop to Orlando, St. Petersburg, Ft. Myers"
> Third Frame: "Ft. Lauderdale, Sarasota, San Juan"
> Fourth Frame: "Hawaii, California, Phoenix, Nassau."

However, ATA did not offer nonstop service to the seven points listed in frames three and four as the advertisement indicates.

The fourth advertisement, which promotes one-way, off-peak fares between Milwaukee and various points, appeared in the February 16, 1997, edition of the *Milwaukee Journal Sentinel*. Although the advertisement includes the statement—"... with always low fares, nonstop flights ..."—in the body of the advertisement, in fact ATA did not offer nonstop service between Milwaukee and Phoenix, one of the listed markets. In addition, during the period February 24 through April 1, 1997, the advertised fare from Milwaukee to Phoenix was available on only one day and from Phoenix to Milwaukee on only four days.

Under section 399.84 of our rules (14 CFR 399.84), a carrier must have a reasonable number of seats available when a fare is advertised. This means it must not only have a reasonable number of seats available each time an advertisement is run, but the carrier must also ensure that, during the overall period within which the fare is offered, there is no lengthy period of time when no seats at all are available. (See, e.g., *Continental Airlines Consent Order*, Order 93-10-49, issued October 29, 1993.) Moreover, an advertisement that wrongly characterizes a flight with intermediate stops as a nonstop flight is unfair and deceptive and constitutes an unfair method of competition in violation of 49 U.S.C. § 41712. (*See, e.g., Southeast Airline Agency Consent Order*, 25 C.A.B. 89, issued June 3, 1957.) Advertisements that do not conform to the requirements of section 399.84 , as well as those that otherwise have the capacity to deceive consumers, also violate 49 U.S.C. § 41712.

In explanation and mitigation, American Trans Air states that the rule violations were unintentional and the product of a temporary breakdown of internal controls that occurred during a change in senior management and the ensuing redirection of the firm's marketing and scheduling strategies toward charter service. ATA asserts that over the last 24 years, ATA has had an exceptional compliance record.

Moreover, ATA reports that it has put into place specific changes in its quality control and operating procedures designed to correct fully and effectively the advertising issues highlighted here. According to ATA, as soon as it became aware, ATA withdrew or corrected the erroneous material in its ads, then ran corrective advertisements where appropriate. ATA adds that it then under-took to increase its control over advertising

content by internalizing its sales functions, and by regularizing the flow of information between the two staff areas concerned with advertising of fares. Finally, ATA relates that it accelerated reprogramming of its fare quote system to enhance the accuracy and timeliness of fare information, and to prevent any future dissemination of incorrect information.

In order to avoid litigation, ATA has reached a settlement of this matter with the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings. ATA consents to the issuance of this order to cease and desist from future violations of section 399.84 of the Department's regulations and to an assessment of $25,000 in compromise of potential civil penalties. Of the total penalty amount, $12,500 shall be due within 15 days from the issuance of this order. The remaining $12,500 shall be suspended for one year following issuance of this order, and then forgiven, unless ATA violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the unpaid portion of the $25,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with our advertising requirements by ATA, as well as by other air carriers and foreign air carriers.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of the order as being in the public interest;

2. We find that American Trans Air, Inc. violated section 399.84 of the Department's regulations by advertising fares for which no seats were available;

3. We find that by engaging in the conduct and violations described in paragraph 2 above, and by publishing advertisements in which it wrongly characterized flights with intermediate stops as nonstop flights, American Trans Air, Inc. also violated 49 U.S.C. § 41712;

4. American Trans Air, Inc., and all other entities owned or controlled by or under common ownership with American Trans Air, and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. § 41712 and section 399.84 of the Department's regulations;

5. American Trans Air, Inc. is assessed $25,000 as a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 of this order. Of the total penalty amount, $12,500 shall be due within 15 days from the issuance of this order. The remaining $12,500 shall be suspended for one year follow-ing issuance of this order, and then forgiven, unless American Trans Air violates this order's cease and desist provision within

that one-year period, or fails to comply with the order's payment provisions, in which case the unpaid portion of the $25,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. Failure to pay the penalty as ordered shall also subject American Trans Air to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and

6. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in Attachment 1.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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